

THE WHITE HOUSE
Washington
November 14, 2022

MEMORANDUM FOR CELESTE DRAKE

FROM: STUART F. DELERY
COUNSEL TO THE PRESIDENT

X 

SUBJECT: LIMITED WAIVER OF EXECUTIVE ORDER 13989
FOR CELESTE DRAKE

Executive Summary

Pursuant to Section 3 of Executive Order [13989](#) (January 20, 2021) (“Executive Order”), and for the reasons stated below, I hereby grant a limited waiver of the requirements of Section 1, Paragraph 2 of the Executive Order for Celeste Drake, solely with respect to AFL-CIO. Additionally, I grant a limited waiver of the requirements of Section 1, Paragraph 3 of the Executive Order for Ms. Drake, with respect to working on multi-employer pension plans. I have determined these waivers are necessary and it is in the public interest to grant these waivers to enable Ms. Drake to effectively carry out her duties as Special Assistant to the President and Deputy Director of the National Economic Council (NEC) within the White House Office (WHO).

The Executive Order requires all covered political appointees in the Biden-Harris Administration to abide by several commitments.

Former Employer: Section 1, Paragraph 2 provides that a covered appointee may not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to a former employer or former client. In addition to communications with former employers and clients with respect to specific party matters, the definition of that term also includes “meetings or other communications relating to the performance of one’s official duties with a former employer or client.” This restriction would prevent Ms. Drake from discussions, meetings, and other communications with AFL-CIO, and from fully accessing AFL-CIO’s expertise, insights, and perspectives, on both matters specifically involving AFL-CIO and its affiliates, as well as discussions on broad policy issues, such as labor rights and American manufacturing.

Lobbying: Section 1, Paragraph 3 prevents a covered appointee who was a federally registered lobbyist in the two-years prior to the date of their appointment from participating in particular matters in which they lobbied, participating in the specific issue areas in which that particular matter falls, or seeking employment with any executive agency in which they lobbied, for two years after the date of their appointment. This

restriction would prevent Ms. Drake from working on certain priority policy matters within NEC and specifically, on multi-employer pension plans and the Pension Rescue Act.

A waiver of the restrictions contained in Section 1, Paragraphs 2 and 3 of the Executive Order may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction, or that it is in the public interest to grant the waiver. In her role as Deputy Director, Ms. Drake will need to meet with labor entities, and AFL-CIO is one of the largest labor groups in the United States. Similarly, Ms. Drake's position at the White House is critical to forming policy matters relating to pensions. If Ms. Drake is unable to meet with AFL-CIO or advise on matters like the Pension Rescue Act, it would hinder her ability to carry out her responsibilities within the NEC. For these reasons, a limited waiver of the requirements of Section 1, Paragraph 2 and Paragraph 3 of the Executive Order is both necessary and in the public interest.

Background

In her current role as the Deputy Director, Ms. Drake is responsible for leading the NEC's work on key priorities related to labor. She is uniquely qualified for this role given her professional background, extensive government service, and expertise in labor policy.

In order to effectively carry out her role and better inform Administration policies, the Deputy Director must be able to understand the concerns and priorities of labor entities both large and small across the country. AFL-CIO is one of the largest labor groups in the United States, comprised of 56 national and international unions that represent 12 million active and retired workers. Ms. Drake worked at AFL-CIO from 2011 to April 2019 as a Trade and Globalization Specialist, focusing on international trade, trade agreements, and worker's rights. Additionally, the individual previously occupying Ms. Drake's role interacted frequently with AFL-CIO.

The Deputy Director also must be able to fully opine on and participate in matters that intersect the economy and labor markets. Chief amongst these issues are pensions and multi-employer pension related policies, including the Pension Rescue Act. Prior to Ms. Drake's appointment to Made in America Office at the Office of Management and Budget (OMB), she worked for the Director's Guild of America. There, she primarily lobbied Congress on a broad variety of matters, including international copyright protection and COVID-relief for workers, including support for the American Rescue Plan Act, extensions of unemployment assistance, as well as multi-employer pension plans.

As the head of OMB's Made America Office, OMB granted Ms. Drake limited waivers with respect to both AFL-CIO and her prior lobbying activity with the Director's Guild of America. Ms. Drake's current role has similarities and parallels with her role at OMB: both roles are focused on advising on broad economic policies and require her to understand the priorities and concerns of labor entities. As a result, she has a need for a waiver in her NEC role, just as she did in her OMB role.

Analysis

In accordance with Section 3 of Executive Order 13989, it is in the public interest to grant Ms. Drake a limited waiver of the requirements of Section 1, Paragraphs 2 and 3 of the Executive Order to enable her to effectively carry out her duties as Deputy Director at the NEC.

In making this assessment, I have considered the factors set forth in Section 3 of the Executive Order, which include: (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment; (ii) the uniqueness of the individual's qualifications to meet the government's needs; (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

Government Need

In making this assessment with respect to Paragraph 2, AFL-CIO is unique in its coverage of labor organizations and unions in a number of areas directly relevant to Ms. Drake's responsibilities at NEC. AFL-CIO is best positioned to share important expertise and insights on key Administration priorities related to labor and worker's rights. AFL-CIO is the largest federation of labor unions in the country and many of its affiliates are smaller unions that might not otherwise have representation in Washington, D.C. AFL-CIO also plays a unique role in shaping congressional, press, and public understanding of labor concerns. If Ms. Drake were not permitted to have direct communication with AFL-CIO, her ability to fully and effectively perform the duties of her position with NEC would be impaired. Her new role also has important similarities to her previous role at OMB with respect to her need for access to this expertise.

With respect to this assessment as to Paragraph 3, the government has a critical need for Ms. Drake's services as Deputy Director for NEC. This position affects NEC's important economic and labor functions. If Ms. Drake were not allowed to advise on pension policies, including the Pension Rescue Act, she would be unable to fulfill her role as Deputy Director.

Lastly, a waiver for Ms. Drake to interact with AFL-CIO and work on pension matters is as necessary for her current role as it is was for her role in OMB, due to the similarities in her portfolios.

Unique Qualifications

Ms. Drake is uniquely qualified for her role with the NEC and brings with her a wealth of expertise and experience. Ms. Drake is a leading authority on labor policy and has served in the Executive Branch, the Legislative Branch, as well as non-profit sector. Most recently, Ms. Drake led the Made in America Office at OMB, where she helped shape and implement Federal procurement and financial management policy to help carry out the President's vision of a future made in all of America by America's workers. Prior to that, she was the Executive in Charge of

Government Affairs at the Director's Guild in America, where she advocated for the economic and creative interests of labor unions. Prior to that, she was a Trade and Globalization Policy Specialist for AFL-CIO, where she shaped American trade policy to promote growth for working families and the manufacturing sector. Ms. Drake also served as Legislative Director for Congresswoman Linda Sánchez and as Legislative Counsel for Congressman Lloyd Doggett.

Prior Lobbying

Ms. Drake's prior lobbying activities were rendered on behalf of a non-profit organization, the Director's Guild of America. She has not lobbied on behalf of any paying clients beyond the Director's Guild of America, and has worked almost exclusively with Congress in her lobbying activities. She did not lobby the White House Office during this time.

Other Limitations

Given Ms. Drake's role and seniority, and the importance and uniqueness of her expertise, having someone else within NEC interact with AFL-CIO or work on pension plans would prevent Ms. Drake from fully executing her job responsibilities. However, this waiver is still limited. First, it is not necessary for Ms. Drake to participate in any party-specific matters directly affecting AFL-CIO's financial interests. Ms. Drake will continue to be recused from these matters. Second, Ms. Drake will not participate in the same particular matters in which she lobbied, nor does she need a waiver to participate in all of the specific issue areas in which those particular matters fell. Rather, Ms. Drake only needs to work on the specific issue area of pensions.

Conclusion

The significant public interest in the White House's ability to accomplish its economic mission requires Ms. Drake to fully advise NEC on labor matters. Without access to the full range of experts and constituents in these areas, Ms. Drake would be severely limited in her ability to effectively carry out her duties as Special Assistant to the President and Deputy Director of the National Economic Council. For these reasons, I grant Ms. Drake a limited waiver of the restrictions in Section 1, Paragraphs 2 and 3 of the Executive Order. Pursuant to this waiver, Ms. Drake may have direct communications with AFL-CIO and may work on pension plan related matters.

This waiver does not otherwise affect Ms. Drake's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. Specifically, this waiver does not permit Ms. Drake to participate in any party-specific matters directly affecting the financial interests of AFL-CIO, including but not limited to, contracts or grants, nor is she allowed to work on particular matters in which she lobbied or in the same specific issue areas other than what has been granted by this waiver.